

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION**

DONNA RHEA,

Plaintiff,

v.

ALAN RITCHEY, INC.
WELFARE BENEFIT PLAN and
ALAN RITCHEY, INC.

Defendants.

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Civil Action No. 4:13-cv-00506

**MEMORANDUM ADOPTING REPORT AND
RECOMMENDATION OF THE UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the United States Magistrate Judge pursuant to 28 U.S.C. § 636. On February 13, 2015, the report of the Magistrate Judge was entered containing proposed findings of fact and recommendations that Defendants' Motion for Summary Judgment (Dkt. 36) be GRANTED, that Plaintiff's Motion for Summary Judgment (Dkt. 39) be DENIED, and that Plaintiff take nothing by her claims. The report further recommended that it be ORDERED that the Alan Ritchey, Inc., Welfare Benefit Plan is the true and correct owner of the disputed \$71,644.77 currently held in trust by Plaintiff via her attorneys, that the Alan Ritchey, Inc., Welfare Benefit Plan is entitled to a constructive trust and equitable lien against these funds, and that Plaintiff and her attorneys should be required to turnover the \$71,644.77 to Alan Ritchey, Inc. in its fiduciary capacity

for the Welfare Benefit Plan. The report further recommended that, if any documents are necessary to complete this turnover, Plaintiff and her attorneys should also be ordered to complete such documents within 30 days of the court's final judgment. Finally, the report found that Defendants should also recover their costs, reserving the matter of an award of attorney's fees pending supplemental briefing on the issue.

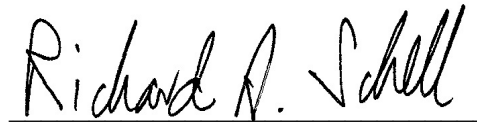
The court has made a *de novo* review of the objections raised by Plaintiff (*see* Dkt. 58) and is of the opinion that the findings and conclusions of the Magistrate Judge are correct and the objections are without merit as to the ultimate findings of the Magistrate Judge. The court hereby adopts the findings and conclusions of the Magistrate Judge as the findings and conclusions of this court.

Therefore, Defendants' Motion for Summary Judgment (Dkt. 36) is GRANTED, Plaintiff's Motion for Summary Judgment (Dkt. 39) is DENIED, and Plaintiff shall take nothing by her claims. It is further ORDERED that the Alan Ritchey, Inc., Welfare Benefit Plan is the true and correct owner of the disputed \$71,644.77 currently held in trust by Plaintiff via her attorneys, that the Alan Ritchey, Inc., Welfare Benefit Plan is entitled to a constructive trust and equitable lien against these funds, and that Plaintiff and her attorneys shall, within 30 days of the final judgment, turnover the \$71,644.77 to Alan Ritchey, Inc. in its fiduciary capacity for the Welfare Benefit Plan. If any documents are necessary to complete this turnover, Plaintiff and her attorneys are also ordered to complete such documents within 30 days of the court's final judgment. Defendants shall also recover their costs.

The court will address any award of attorney's fees and enter final judgment pending completion of the parties' supplemental briefing on the attorney's fees issue.

IT IS SO ORDERED.

SIGNED this the 30th day of March, 2015.

A handwritten signature in black ink, reading "Richard A. Schell". The signature is written in a cursive style with a horizontal line underneath it.

RICHARD A. SCHELL
UNITED STATES DISTRICT JUDGE